IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION No. 2756 of 2005.
Prakash Sitaram Tayade, Staff Officer. **Petitioner**.

Versus.

The Government of Maharashtra and Ors.

..Respondents.

Petitioner in person present.

Mr. R. M. Sawant, Government Pleader for respondent No.4 & 5.

CORAM :H.L.GOKHALE &
S.R.DONGAONKAR.JJ.
DATE :19/04/2006.

P.C.

. Heard the petitioner in person and Mr.R.M. Sawant, Government Pleader,appearing for the respondent Nos. 4 and 5. The petitioner is working under the 4th respondent- authority and the present petition is filed since he is aggrieved by the denial of his promotion to the Post of Assistant Legal Advisor. Respondent no. 5 is the person who has been appointed in that post.

2] The case of the petitioner is that under the Recruitment Rules for the post of Assistant Legal Advisor, the appointment is to be made firstly by promotion or by deputation or by nomination. The relevant rule reads as follows;

. Recruitment Rules for post of Assistant Legal Advisor, Appointment shall be made either;

1] By promotion from amongst the Staff Officer in Mumbai Metropolitan Region Development Authority who:

a] have held the post of the Staff Officer for not less than 5 years &

b] Possess degree in law (three years course) of the statutory University;

OR

2] By deputation.

OR

3] By nomination.

3] The submission of the petitioner is that under the first sub clause [a] of Rule 1, one must be holding the post of Staff Officer for not less than five years and [b] must be possessing a degree in law. The petitioner points out that he has been working as Staff Officer for 14 years i.e. from 25th February, 1991 and he has Degree in Law obtained in May, 2001. It is,therefore, that he should have been promoted to the post of Assistant Legal Advisor when it fall vacant. He also points out that two other officers Mr. R. R. Chavan and Mr. G.K. Mayekar were promoted in this fashion earlier. Mr. Mayekar retired from that post on 31st August, 1999 and it is the case of the petitioner that he has been holding

the charge of the post of Assistant Legal Advisor for two and half years. He, therefore, submits that he should have been promoted under clause 1 of the Recruitment Rules. He also relies upon the guidelines issued by respondent no.5 in the year 1984 concerning the staff appointment which are known as The Bombay Metropolitan Region Development Authority Staff Appointment Guidelines, 1984. Clause (1) of the Guidelines lays down,that the staff shall be appointed by any of the following methods of recruitment in the order of priority;

> [i] By promotion of the employees of the Authority where the Recruitment Rules so permit; or
>
> [ii] By selection from the sources which are notified thereunder.

4] The petitioner has appeared in person and his submission is that in view of those guidelines promotion has to be the method to be first followed and since the petitioner is eligible he ought to be promoted to that post.

5] It has been pointed out by respondent No.4 employer in reply that the requirement was to have the experience of not less than five years either internally or otherwise. The petitioner was not having the experience in an equivalent post for five years and,therefore, was not eligible. It

is,therefore, that the respondents had to go for advertisement.

6] Having noted these rival submissions when we look to the Recruitment Rules, clauses (a) & (b) will have to be read together and not separately as sought to be canvassed by the petitioner. Otherwise, it will mean that somebody who is working as a Staff Officer in any department for more than five years, on obtaining a law degree, will contend that he has qualification and therefore he ought to be considered eligible for this post. The post is that of an Assistant Legal Advisor and the person to be appointed is required to fulfill the responsibilities of that post. This being the requirement, these two clauses will have to be read together. When the two clauses state that the person ought to have held post of Staff Officer for not less than five years and possess degree in law, it will mean that after obtaining a degree in law he ought to have an internal experience of not less than five years. Any other interpretation will lead to erroneous results. The petitioner himself is canvassing that he is holding charge for two and half years as Assistant Legal Advisor but the fact remains that prior to that he was not having equivalent experience after having obtained the Law Degree, which he has obtained only

in May 2001.

7] It is, in these circumstances that respondent no. 4 adevertised the said post and laid down the requirement of experience of legal work in responsible position in a well reputed legal firm or legal department of the State Government or in Corporation for the period of not less than five years. In the present case, the petitioner also applied when the advertisement was issued. His application has been considered, but in view of the fact that he did not have requisite experience, he could not be considered. As far as respondent no. 5 is concerned, she has requisite experience and after considering the merit of all the application Selection Authority has selected respondent no. 5.

8] Mr. Tayade relied on the Judgment in the case of Ajit Singh and others Vs. The State of Punjab and others reported in A.I.R.,1999 S.C. 3471. Paragraph no. 22 of this Judgment states that employees are entitled to an equal opportunity when the matter relates to employment or appointment. The authority further lays down that Article 16 (1) provides for an opportunity to be considered to every employee otherwise eligible for promotion or who comes within the zone of consideration. In the present case, the petitioner was not eligible for

promotion for the reason that he did not have the requisite experience and hence he could not be considered by the channal of promotion. When the advertisement was issued he was not eligible under the advertisement also. Therefore, there is nothing wrong in the selection process and the decision in not selecting the petitioner.

9] Petition is dismissed.

(H.L.GOKHALE.J.)

(S.R.DONGAONKAR.J.)